IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 22687 of 1996

Between:

A. Giri Prasad s/o Erukulappa
Resident of Dharmavaram town,

Ananthapur district.

..... PETITIONER

AND

1. The Managing Director, A.P. State Cooperative Rural Irrigation

Corporation, HACA Bavan, Hyderabad.
2. A.P.State Cooperative Rural Irrigation corporation Ltd., rep. by its

Managing Director, 5-10-193, HACA Bhavan,

1st floor, Opp. Public garden, Hyderabad,

3. The Executive Engineer, APSC.R.I.C.Ltd., Anantapur division,

Anantapur.
4. Govt. of A.P. rep. by its Secretary, Food and Agricultural coop.

Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, declaring the action of the respondents is not issuing posting to the petitioner, as illegal, violative of rights under Article 14, 16 and 21 of

the Constitution of India, and further direct the respondents to continue the petitioner by paying the scales applicable to the post and grant all consequential benefits issued vide G.O.Ms.No.1185 dated 31.12.1991 as oral disengagement is contrary to law.

For the Petitioner: MR.P.SRINIVASULU, ADVOCATE

For the Respondents: MR.P.R.BALARAMI REDDY, S.C. for

Cooperative Rural Irrigation Corporation

The Court made the following:

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.22687 OF 1996

O R D E R:

The petitioner worked on N.M.R. basis in the A.P. State Cooperative Rural Irrigation Corporation, Hyderabad since 3.6.1987. From the pleadings of the respondents it appears, the petitioner absconded from duty from 1.8.1989 to 19.2.1992. On 20.2.1992, the petitioner approached the first respondent seeking re-engagement and his request was considered and instructions were issued to engage him temporarily as helper Gr.II on NMR basis. The petitioner reported to duty on 17.6.1992 and worked upto 30.4.1993 allegedly very irregular too from 1.5.1993 onwards. The petitioner alleges that he was unauthorizedly dis-engaged from service, whereas the respondents states that he absconded yet again. Meanwhile, a G.O.Ms.No.1185 Food & Agriculture(Coop.VI), Department, dt. 31.12.1991 was issued by the State Government on the basis of proposals of the first respondent for regularizing the services of persons working in the Corporation on daily wages in various categories and who had been initially recruited other than through the employment exchange and had completed three years of service by 31.3.1989. The petitioner's name is set out at S.No.147 of the annexure of G.O.Ms.No. 1185 F & A (Co.op VI), Department, dated 31.12.1991. In that regard the service of persons who were in continuous service on casual basis from 3.6.1987 were regularized under

the said Government Order.

Contending that despite the regularization of his services, he was not given the benefit of such regularization and in terms of pay scales and other benefits he was not being treated as permanent helper, the petitioner made representations including one dated 17.3.1993 to the first respondent. However contending that he was dis-engaged and orally asked not to attend the work by the respondent the writ petition is filed asking for posting orders and in subsistence seeking continuous in service on a regular basis.

The first respondent filed acounter-affidavit on behalf of the other respondents also on 28.11.1996. There is no pleading in demurral by the petitioner to this counter-affidavit. In the Counter-affidavit, it is contended that from 1.5.1993 on wards the petitioner absconded from duty and has not reported. This plea of the respondent is not denied by any plea of the petitioner on record.

It is however legitimate to infer that despite the status of the petitioner as a regular employee of the corporation, the respondents have not initiated any proceedings against him for his alleged unauthorized absence. The regular service of the petitioner with the respondent Corporation cannot just be wished away. It has to be brought to an end by some process recognized by law. A formal order is required to be passed by the respondent either terminating the services of the petitioner stigmatically or non-stigmatically after a due process of enquiry. In case the respondent Corporation desire to treat the continued unauthorized absence of the petitioner as abandonment of service, even so an order is required to be passed by the respondents treating the petitioner as having abandoned service. A regular service relationship in public law can be brought to an end only on attaining of the age of superannuation, death, during service or termination in accordance with law, it does not cease of its own accord.

On the above analysis of the legal position, the presumption of the respondents that the unauthorized absence of the petitioner since 1.5.1993 brought to an end the

relationship of employee and employer between the petitioner and the respondent is misconceived. Consequently, the petitioner would normally be entitled to an order of reinstatement into service with consequential benefits. The respondents have however, contended in the counter-affidavit, a contention which is not contested by the petitioner, that the petitioner abstained from duty unauthorisedly since 1.5.1993. In these circumstances, the petitioner would not be entitled to wages for the period of his absence on his own volition and without the sanction or the permission of the employer, on application of the principle “No work, No pay.” However, since the silence of the respondents cannot bring about a cessation of the employee/employer relationship between the petitioner and the respondents, the petitioner shall be entitled to a direction of reinstatement into service from the date of this judgment with no benefits as to back wages or any other benefits consequent on his regularization of service by the order in G.O.Ms.No.1185 F & A (Co. Operation VI), Dept, dated 31.12.1991. Such restricted benefit is also appropriate in view of the fact that the petitioner approached this court more than three years after his dis-engagement from service. The respondents are however at liberty to proceed against the petitioner in accordance with law.

The Writ petition is accordingly disposed of. There shall be no order as to costs.

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(GODA RAGHURAM, J)

10th August, 2004.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director, A.P. State Cooperative Rural Irrigation

Corporation, HACA Bavan, Hyderabad.
2. The Managing Director, A.P.State Cooperative Rural Irrigation

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garden, Hyderabad,

3. The Executive Engineer, APSC.R.T.C.Ltd., Anantapur division,

Anantapur.
4. The Secretary, Food and Agricultural Co-operative Department,

Government of A.P., Secretariat, Hyderabad.

5.Two C.D. copies